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UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 (HONORABLE JOHN A. HOUSTON)

12 UNITED STATES OF AMERICA,) Criminal No. _____

12 UNITED STATES OF AMERICA,) Criminal No. 10-CR-2153-JAH
13 Plaintiff,) Date: July 19, 2010
14 v.) Time: 10:30 a.m.
15 CHRISTOPHER ESPINOZA,)
16 Defendant.) STATEMENT OF FACTS AND
) MEMORANDUM OF POINTS
) AND AUTHORITIES IN SUPPORT
) OF DEFENDANT'S PRETRIAL MOTIONS

I.

STATEMENT OF FACTS¹

20 Christopher Espinoz is charged in a four count indictment
21 with co-defendant Jorge Samame with conspiracy to distribute controlled
22 substances in violation of 21 U.S.C. §§ 841(a)(1) and 846 and
23 conspiracy to launder monetary instruments in violation of 18 U.S.C.
24 1956(h). Mr. Espinoza has entered a not guilty plea.

27 ¹ This statement of facts is based on discovery provided by the
28 government. Mr. Espinoza reserves the right to contradict, explain,
and/or supplement this statement of facts at any future pre-trial
proceedings and at trial, based on additional discovery and on pre-trial
investigation.

1 The indictment alleges that beginning at an unknown date and
2 continuing through 2010, Christopher Espinoza conspired to distribute
3 oxycontin and money launder. The case arises out of an investigation
4 of several years.

5 The government has produced 63 pages of discovery.

6 **II.**

7 **MOTION TO COMPEL DISCOVERY/PRESERVE EVIDENCE**

8 Pursuant to the Fourth, Fifth and Sixth Amendments to the
9 United States Constitution, Rules 12 and 16 of the Federal Rules of
10 Criminal Procedure, Brady v. Maryland, 373 U.S. 83 (1963), 18 U.S.C.
11 3500 (the Jenks Act), Mr. Espinoza moves the Court for an order
12 compelling further discovery, and for the preservation of evidence.
13 This motion includes all discovery in the possession, custody or
14 control of the government, and of which the government attorney may
15 become aware through the exercise of due diligence. See Fed. R. Crim.
16 P. 16. The following discovery is specifically requested.

17 (1) The Defendant's Statements. All written or recorded
18 statements, any written record containing the substance of any oral
19 statements, any written summaries of his oral statements, and the
20 handwritten notes of any government agents who took notes of such
21 statements, and any response to Miranda warnings. Fed. R. Crim. P.
22 16(a)(1)(A).

23 (2) Arrest Reports, Notes and Surveillance. All arrest
24 reports, notes, dispatch or any other tapes that relate to the
25 circumstances surrounding the defendant's arrest and/or questioning.
26 This request includes, but is not limited to, any rough notes, records,
27 reports, transcripts, or other documents which contain statements of
28 the defendant or any other discoverable material. Fed. R. Crim. P.

1 16(a)(1)(A); Brady v. Maryland, 373 U.S. 83 (1963). The government
2 must produce arrest reports, investigator's notes, memos from arresting
3 officers, dispatch tapes, sworn statements, and prosecution reports
4 pertaining to the defendant. Fed. R. Crim. P. 16(a)(1)(B) and (C);
5 Fed. R. Crim. P. 26.2 and 12(i).

6 (3) The Defendant's Prior Record. The defendant requests
7 disclosure of his prior record. Fed. R. Crim. P. 16(a)(1)(B).

8 (4) Evidence Seized. The defendant requests production of
9 evidence seized as a result of any search, either warrantless or with a
10 warrant. Fed. R. Crim. P. 16(a)(1)(C).

11 (5) Tangible Objects. The defendant requests the
12 opportunity to inspect and copy as well as test, if necessary, all
13 other documents and tangible objects, including photographs, books,
14 papers, documents, alleged narcotics, fingerprint analyses, vehicles,
15 or copies of portions thereof, which are material to the defense or
16 intended for use in the government's case or were obtained from or
17 belong to him. Fed. R. Crim. P. 16(a)(1)(C).

18 (6) Request for Preservation of Evidence. The defendant
19 specifically requests the preservation of all physical evidence that
20 may be destroyed, lost, or otherwise put out of the possession,
21 custody, or care of the government and which relate to the arrest or
22 the events leading to the arrest in this case. This request includes,
23 but is not limited to, the results of any fingerprint analysis, the
24 alleged controlled substance, vehicles, the defendant's personal
25 effects, and any other evidence seized from the defendant or any other
26 party.

27 (7) Reports Of Examinations And Tests. The defendant
28 requests the opportunity to inspect and copy any reports of any

1 scientific tests which are material to the preparation of the defense
2 or intended for use in the government's case. Fed. R. Crim. P.
3 16(a)(1)(D).

4 (8) Expert Witnesses. The defendant requests the name,
5 qualifications, and a written summary of the testimony of any person
6 that the government intends to call as an expert witness during its
7 case. Fed. R. Crim. P. 16(a)(1)(E). The defendant requests that the
8 Court order disclosure of this discovery at least four weeks prior to
9 trial in that the defendant may perform follow-up investigation,
10 prepare in limine motions in a timely manner, and prepare for trial.

11 (9) Brady Material. The defendant requests all documents,
12 statements, agents' reports, and tangible evidence favorable to the
13 defendant on the issue of guilt, which affects the credibility of the
14 government's case, or which may result in a lower sentence under the
15 United States Sentencing Guidelines. Under Brady, impeachment as well
16 as exculpatory evidence falls within the definition of evidence
17 favorable to the accused. United States v. Bagley, 473 U.S. 667
18 (1985); United States v. Agurs, 427 U.S. 97 (1976).

19 (10) Giglio Information. The defendant requests all
20 statements and/or promises, express or implied, made to any government
21 witnesses in exchange for their testimony in this case, and all other
22 information which could arguably be used for the impeachment of any
23 government witnesses. Giglio v. United States, 405 U.S. 150 (1972).

24 (11) Henthorn Material. The defendant requests that the
25 government examine the personnel files of all government agents in this
26 action for Brady material. United States v. Herring, 83 F.3d 1120 (9th
27 Cir. 1996).

28 (12) Informants and Cooperating Witnesses. The defendant

1 requests disclosure of the name(s), address(es), and location(s) of all
2 informants or cooperating witnesses used or to be used in this case,
3 and in particular, disclosure of any informant who was a percipient
4 witness in this case or otherwise participated in the crime charged
5 against the defendant. Roviaro v. United States, 353 U.S. 52, 61-62
6 (1957). The government must disclose any information derived from
7 informants which exculpates or tends to exculpate the defendant. Brady
8 v. Maryland, 373 U.S. 83 (1963). The government must disclose any
9 information indicating bias on the part of any informant or cooperating
10 witness. Id. The defendant submits further authority on this issue
11 infra.

12 (13) Jencks Act Material. The defendant requests production
13 at least four weeks in advance of trial of all material, including
14 dispatch tapes, which the government must produce pursuant to 18 U.S.C.
15 § 3500. Advance production will avoid the possibility of delay at the
16 request of defendant to investigate the Jencks material.

17 (14) Any Proposed 404(b) Evidence. The defendant requests
18 prior notice of any other acts that the government intends to introduce
19 in its case-in-chief, through impeachment, or in its rebuttal case.
20 Fed. R. Crim. P. 16(a)(1)(C); Fed. R. Evid. 404(b) and 609(b); United
21 States v. Vega, 188 F.3d 1150 (9th Cir. 1999). The defendant requests
22 that the Court order disclosure of this discovery at least four weeks
23 prior to trial in order to investigate it, to prepare in limine motions
24 in a timely manner, and to prepare adequately for trial.

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III.

MOTION FOR LEAVE TO FILE FURTHER MOTIONS

3 Discovery and investigation are ongoing in this case. Mr.
4 Espinoza respectfully requests that he be allowed to file further
5 motions as appropriate on the basis of further information.

IV.

CONCLUSION

8 For the reasons stated above, Mr. Espinoza respectfully
9 requests that the Court grant his motions, and accord such other relief
10 as seems just.

Respectfully submitted,

Dated: July 12, 2010

/S/ Wendy S. Gerboth
Wendy S. Gerboth
Attorney for Mr. Espinoza